

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DUKE MANUFACTURING CO.,)
)
Plaintiff,)
)
 vs.) Cause No: 4:05-cv-00147 CEJ
)
)
TURBOCHEF TECHNOLOGIES, INC.,)
)
)
Defendant.)

NOTICE OF DISMISSAL

Pursuant to Fed. R. Civ. P. 41(a)(1), plaintiff Duke Manufacturing Co., ("Duke") respectfully notifies the court of its intent to dismiss the above-captioned action against Turbochef Technologies, Inc., ("Turbochef"), without prejudice.

As grounds for this Notice, plaintiff states:

1. Under Fed. R. Civ. P. 41(a)(1), "an action may be dismissed by the plaintiff without order of the court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgement...." Further, "[u]nless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice...." Fed. R. Civ. P. 41(a)(1).

2. Plaintiff has not yet served Turbochef with the Complaint and Summons in this lawsuit.

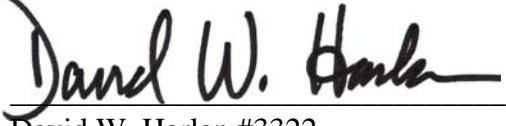
3. Defendant Turbochef has not Answered or otherwise responded in the instant action.

WHEREFORE, for the reasons stated herein, plaintiff respectfully requests dismissal of the instant case.

Respectfully submitted,

SENNIGER, POWERS

By:


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